

1 KEKER, VAN NEST & PETERS LLP  
JOHN W. KEKER - # 49092  
2 jkeker@keker.com  
JAN NIELSEN LITTLE - # 100029  
3 jlittle@keker.com  
BROOK DOOLEY - # 230423  
4 bdooley@keker.com  
KATE E. LAZARUS - # 268242  
5 klazarus@keker.com  
NICHOLAS D. MARAIS - # 277846  
6 nmarais@keker.com  
IAN KANIG - # 293625  
7 ikanig@keker.com  
633 Battery Street  
8 San Francisco, CA 94111-1809  
Telephone: 415 391 5400  
9 Facsimile: 415 397 7188

10 Attorneys for Defendant  
SUSHOVAN HUSSAIN

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 SUSHOVAN HUSSAIN,

18 Defendant.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 3:16-cr-00462-CRB

**DEFENDANT SUSHOVAN HUSSAIN'S  
STATUS REPORT IN ADVANCE OF  
JULY 21, 2017 HEARING**

Date: July 21, 2017  
Time: 11:00 a.m.  
Dept.: Courtroom 6, 17th Floor  
Judge: Hon. Charles R. Breyer

Date Filed: November 10, 2016

Trial Date: January 29, 2018

1 In advance of the hearing scheduled for July 21, 2017 at 11:00 a.m., Defendant Sushovan  
 2 Hussain submits the following status report regarding issues to be raised before the Court.

3 **A. Pending Motions**

4 There are two motions pending before the Court.

5 **1. Government's Motion for Rule 17 Subpoenas**

6 On June 16, 2017, the government filed a motion seeking two Rule 17(c) subpoenas to  
 7 Hewlett-Packard Enterprise ("HPE"); the first for a transcript of Mr. Hussain's 2013 interview  
 8 with the Financial Reporting Council (or "FRC"); the second for documents that Mr. Hussain  
 9 produced to various HP subsidiaries in related, U.K.-based civil litigation. ECF No. 65. On  
 10 June 29, Mr. Hussain opposed the government's motion, ECF No. 72; on July 7, the government  
 11 filed a reply, ECF No. 77; and on July 14—by stipulation and with the Court's permission—  
 12 Mr. Hussain filed a sur-reply. ECF Nos. 89, 90. On July 19, Mr. Hussain filed a Statement of  
 13 Recent Decision regarding the newly decided case, *U.S. v. Allen*, 16-898-CR (2d Cir. July 19,  
 14 2017), ECF No. 93.

15 The key questions presented by the parties' briefs are: (a) whether the FRC testimony was  
 16 compelled such that the government's use of the resulting transcript would jeopardize  
 17 Mr. Hussain's Fifth Amendment rights; and (b) whether it is proper for the government to seek  
 18 documents that Mr. Hussain was required to produce in civil litigation in England, where he was  
 19 unable to assert Fifth Amendment, spousal, and other U.S. litigation privileges.

20 **2. Defendant's Motion to Compel**

21 On June 30, 2017, Mr. Hussain filed a Motion to Compel Production of Documents from  
 22 the Government's Investigatory File. ECF No. 74. Mr. Hussain sought production of documents  
 23 regarding investigations into HP's public disclosures, documents from the SEC's investigation  
 24 file, and the government's correspondence with the SEC and the U.K. Serious Fraud Office. The  
 25 government filed its response to Mr. Hussain's motion on July 7, 2017. ECF No. 78. The  
 26 government responded that it either had produced or would produce all documents requested by  
 27 Mr. Hussain, to the extent that such documents were in the government's possession or could be  
 28 obtained from third parties.

Accordingly, only two outstanding issues remain regarding Mr. Hussain's motion. *See* ECF No. 81 (Reply in Support of Mot. to Compel). First, Mr. Hussain requests that the Court order the government to complete its production of the requested documents by August 14, 2017, or to inform Mr. Hussain by that date why the documents have not been produced. Second, Mr. Hussain requests that the government be ordered to submit its communications with the SEC and U.K. Serious Fraud Office to the Court for *in camera* review to ensure the government's compliance with its discovery obligations.

## **B. Other Issues for the Court's Consideration**

There are two other issues about which defense counsel wishes to apprise the Court.

### **1. Pre-Trial Schedule**

Prior to the May 10, 2017 hearing, the parties submitted a joint Proposed Stipulated Scheduling Order setting out the dates for various pre-trial filings and exchanges. ECF No. 57-1. On July 19, counsel for Mr. Hussain sent government counsel a revised proposed Stipulated Scheduling Order, taking into account the Court's directions at the May 10 hearing regarding dates for the jury questionnaire and jury selection. As of the time of this filing, we await the government's response. Mr. Hussain now attaches hereto a copy of that schedule as a [proposed] scheduling order and respectfully requests that the Court enter it.

### **2. Status of Authenticity and Business Records Stipulation**

As counsel advised the Court at the May 10 hearing, Mr. Hussain and the government have been discussing a means of avoiding the need to call document custodians at trial (and the need to seek depositions of overseas document custodians) to establish the authenticity or the business records foundation of documents to be introduced into evidence. Of particular concern are documents held overseas by Hewlett-Packard Company ("HP") and its subsidiaries and by Deloitte LLP, which may be outside the reach of trial subpoenas.

Mr. Hussain proposed that the parties stipulate that any document produced in this case or in any related investigation or civil case by HP or its subsidiaries or by Deloitte be presumed to be (a) authentic for the purposes of Fed R. Evid. 901 and 902 and (b) a business record for purposes of Fed. R. Evid. 803(6) and 803(7), in the absence of any affirmative evidence

1 introduced to the contrary. The government did not agree to Mr. Hussain's proposed stipulation  
 2 and proposed instead that the parties stipulate to the authenticity of specific documents on a  
 3 document-by-document basis. Defense counsel explained that requiring Mr. Husain to identify  
 4 now the documents he intends to introduce into evidence (or use in cross-examination) would  
 5 require him to disclose his defense more than six months before trial.

6 Because the parties were unable to agree on a stipulation, defense counsel contacted  
 7 counsel for HP and Deloitte to confirm whether they will agree to produce at trial witnesses who  
 8 can, if necessary, testify to the authenticity or the business-records foundation of documents  
 9 produced by HP and Deloitte. Mr. Hussain understands that counsel for the government has  
 10 encouraged HP and Deloitte to provide such witnesses. Defense counsel has not secured any  
 11 agreement with counsel for HP or for Deloitte, but, based on communications to date, defense  
 12 counsel is hopeful that such agreements may be reached. However, in the event that such  
 13 agreements cannot be made, and/or a stipulation cannot be reached with the Government,  
 14 Mr. Hussain may need to seek relief from the Court, including permission to take Rule 15  
 15 depositions of foreign records custodians before and/or during trial.

16  
 17 Dated: July 19, 2017

KEKER, VAN NEST & PETERS LLP

18  
 19 By: /s/ John W. Kecker

20 JOHN W. KEKER  
 21 JAN NIELSEN LITTLE  
 22 BROOK DOOLEY  
 KATE E. LAZARUS  
 NICHOLAS D. MARAIS  
 IAN KANIG

23 Attorneys for Defendant  
 24 SUSHOVAN HUSSAIN  
 25  
 26  
 27  
 28